

**Supporting Statement for the Notifications Related to Community Development and
Public Welfare Investments of State Member Banks
(FR H-6; OMB No. 7100-0278)**

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the Notifications Related to Community Development and Public Welfare Investments of State Member Banks (FR H-6; OMB No. 7100-0278). Regulation H requires state member banks that want to make community development or public welfare investments to comply with the Regulation H notification requirements:

- if the investment does not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank;
- if certain criteria are not met, a request for approval must be sent to the appropriate Federal Reserve Bank; and,
- if the Board orders divestiture but the bank cannot divest within the established time limit, a request or requests for extension of the divestiture period must be submitted to the appropriate Federal Reserve Bank. 12 CFR 208.22.

In addition to extending these reports for three years, the Federal Reserve is proposing to adopt a form that banks could, at their option, use to notify the Federal Reserve Banks of public welfare investments that do not require Board approval. The proposed form would be implemented to potentially help ease the burden of complying with the reporting provisions of Regulation H. The model form is attached to this document. The burden associated with the reports is estimated to be eighty hours for thirty-one respondents and would not increase with the implementation of the new form.

Background and Justification

On December 7, 1994, the Board added to Regulation H a new section entitled Community Development and Public Welfare Investments to implement a provision of the Depository Institutions Disaster Relief Act of 1992. The statutory provision authorizes state member banks to make investments designed primarily to promote the public welfare to the extent permissible under state law and subject to regulation by the Federal Reserve. Regulation H permits state member banks to make certain public welfare investments without prior approval and to make other public welfare investments with specific Board approval.

A state member bank may make a public welfare investment without prior approval so long as the aggregate of such investments does not exceed 5 percent of the capital stock and surplus of the state member bank, and:

- the investment (a) previously has been determined to be a public welfare investment by the Board or the Comptroller of the Currency, (b) is in a community development financial institution as defined in the Community Development Banking and Financial Institutions Act of 1994, or (c) is in an entity established solely to engage in one or more of the following activities: low- and moderate-income housing; nonresidential real-estate development in a low- or moderate-income area that is targeted towards low- and moderate-income persons; small business development in a low- or moderate-income area; job training or placement for low- and moderate-income persons; job creation in a low- or moderate-income area for low- and moderate-income persons; and technical assistance and credit counseling to benefit community development;¹
- the investment does not violate state law;
- the investment does not expose the state member bank to liability beyond the amount of the investment;
- the bank is at least adequately capitalized and rated a composite CAMELS "1" or "2" and at least "1" or "2" in its last consumer compliance examination;
- the state member bank is not subject to any written agreement, cease and desist order, capital directive, prompt corrective action directive, or memorandum of understanding issued by the Board or a Reserve Bank acting under delegated authority; and
- within thirty days of the investment, the bank advises its Reserve Bank of the amount of the investment and the identity of the entity in which the investment is made.

If these conditions are not met, a state member bank must receive Board approval before making an investment. In no event may aggregate public welfare investments exceed 10 percent of the state member bank's capital stock and surplus. 12 U.S.C. 338a

If a public welfare investment ceases to meet the statutory requirements or certain regulatory requirements, the state member bank must divest itself of the investment to the extent that the investment ceases to meet those requirements. (Divestiture is not required if the investment ceases to meet the non-statutory requirements concerning capital, examination ratings, and enforcement actions.) This divestiture is governed by the same requirements as divestitures of interests acquired by a lending subsidiary of a bank holding company or a bank holding company itself in satisfaction of a debt previously contracted. 12 CFR 225.140. The Federal Reserve will monitor the efforts of the company to effect an orderly divestiture, and may order divestiture if supervisory concerns warrant such action.

Regulation H requires state member banks engaging in permissible public welfare and community development investments to provide notice of such investments to the Federal Reserve Bank in their District. The regulation specifies that the notice, which is currently submitted on bank letterhead, provides the amount of the investment and identity of the entity in which the investment was made. In addition to this information, banks typically describe the mission and service area of

¹ Regulation H uses the U.S. Department of Housing and Urban Development's Chapter 69 Community Development definition of low- and moderate-income persons and the U.S. Small Business Administration's definition of a small business.

the entity in which the investment was made, and how the investment meets the definition of public welfare and community development. Even though this information is not required by Regulation H, Federal Reserve Bank staff contact the investing bank to obtain such information to evaluate the permissibility of the investment, imposing additional burden for both Reserve Bank staff and bank management.

Information about the identity and amount of public welfare investments that Regulation H requires the Board to collect is useful to the Community Affairs function of the System. The mission of the Federal Reserve's Community Affairs Office (CAO) is to support the System's economic growth objectives by promoting community development and fair and impartial access to credit. Toward this end, the CAO of each Reserve Bank develops specific products and services to meet its regional market's needs for information relating to community development activities. One such product is the *Directory of Community Development Investments*, a compilation of investments by banks and bank holding companies that meet the regulatory definition of public welfare and community development. This publication serves as a "best practices" guide to financial institutions seeking to initiate and/or engage in innovative investments that promote community development. The banks' written notices of their investments are the primary sources for the publication. The information derived from those notices also assists CAO staff in providing direct technical assistance to financial institutions seeking to identify and invest in qualified community development entities and projects.

Description of Information Collection

There are three types of notification requirements in 12 CFR 208.22: the public welfare investment notice, the request for prior approval, and the request for extension of the divestiture period. When a public welfare investment is made without prior approval, the state member bank must notify its Bank within thirty days of the investment, including the amount of the investment and the identity of the entity in which the investment is made. The Federal Reserve proposes to adopt an optional reporting form that would promote uniform and thorough notices from the respondents (see attached form). When a public welfare investment requires prior Board approval, the state member bank must submit a request for approval to the Board that should include, at a minimum:

- the amount of the proposed investment;
- a description of the entity in which the investment is to be made;
- an explanation of how the investment meets the statutory definition of a public welfare investment;
- a description of the state member bank's potential liability under the proposed investment;
- the amount of the state member bank's aggregate outstanding public welfare investments;
- the amount of the state member bank's capital stock and surplus, and
- the reason(s) why the investment is ineligible to be made without prior approval.

When a public welfare investment exceeds the scope of, or ceases to meet, the public welfare investment requirements, a state member bank must divest itself of that investment within two years. Within the divestiture period it is expected that the state member bank will make a good faith effort

to dispose of the investment at the earliest practicable date. The Board may, upon written request, extend the two-year period for up to three additional one-year periods.

Proposed Revisions

The proposed revision would create a form and checklist that banks could use, at their option, to report the information required by Regulation H for investments that do not require prior Board approval. To the extent that this voluntary form were used by banks, it would potentially ease their reporting burden by allowing the banks to fill in the form rather than typing a letter containing the required information. The form will also potentially help the Federal Reserve staff to collect uniform and thorough information about community development and public welfare investments. The checklist would help banks determine whether they must submit a request for prior approval.

Time Schedule for Information Collection

The three types of information collection (public welfare investment notice, request for approval, and request for extension of a divestiture period) are event generated. A state member bank must file a notice with the appropriate Federal Reserve Bank within thirty days of making an investment that does not require prior approval. For investments requiring prior approval, the Board must act on the request within sixty days of receipt or notify the requesting state member bank that a longer period of time will be required. If a state member bank fails to accomplish a required divestiture within two years, it must file a request for extension. A bank may receive up to three one-year extensions.

Legal Status

The Board's Legal Division has determined that the public welfare investment notice, request for approval, and request for extension of the divestiture period are authorized by the Federal Reserve Act, 12 USC 338a, and by Regulation H, 12 CFR 208.22, and are required to obtain a benefit. Individual respondent data generally are not regarded as confidential, but information that is proprietary or concerns examination ratings would be considered confidential.

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System specific to the development of the proposed form. However, Federal Reserve staff's research revealed that the federal banking supervisory agencies of national and state nonmember banks have similar requirements for reporting qualified community development and public welfare investments. In particular, the Office of the Comptroller of the Currency requires national banks to provide slightly more detailed information when the bank and the investment meet the agency's criteria for self-certification.

Given that most community development entities obtain funding from a variety of local and regional financial institutions, Federal Reserve staff consults with other agencies' staff to discuss applications relating to such investments, as appropriate.

Estimate of Respondent Burden

The current annual reporting burden imposed on all institutions for the public welfare investment notice, the request for prior approval, and the request for extension of the divestiture period is eighty hours as shown in the table below. The estimated number of respondents listed in the table below is based on the number of requests and notices received by the Federal Reserve in 2001. The total annual burden of these reports represents less than 1 percent of total Federal Reserve System annual reporting burden.

	<i>Estimated number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Investment notice	25	1	2	50
Application	5	1	5	25
Extension of divestiture period	<u>1</u>	1	5	<u>5</u>
<i>Total</i>	31			80

Based on an average hourly cost of \$20, the annual cost to the public is estimated to be \$1,600.

Sensitive Questions

There are no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

Annual costs associated with providing the instructions for and processing the investment notice, request for prior approval, and request for extension of the divestiture period are negligible. The Federal Reserve does not incur any mailing or printing cost in administering these requirements.

Attachment

Model Form
for
Notice of Public Welfare Investments by State Member Banks
to the Federal Reserve System

**Instructions for Filing the
Notice of Public Welfare Investments by State Member Banks
to the Federal Reserve System**

Section 208.22 of Regulation H (12 CFR 208.22) permits Federal Reserve member banks to make certain public welfare investments. Investments that meet the requirements specified in section 208.22(b) of Regulation H may be made without prior regulatory approval. To assist it in determining if a proposed public welfare investment may be made without prior regulatory approval, a bank, at its option, may use the checklist attached to this form.

For a public welfare investment not requiring prior approval, the investing bank must notify the appropriate Reserve Bank of the investment within 30 days of making the investment. Such a notice must identify the amount of the investment and the entity in which the investment is made. To fulfill this notice requirement, a bank may use this form, or may provide the required information by way of a letter or other submission on bank letterhead.

For a public welfare investment requiring prior approval, the investing bank should not use this form. Instead, the investing bank must submit (by way of a letter or other submission on bank letterhead) the information specified in section 208.22(d) of Regulation H to the Reserve Bank of which it is a member. The Board is required to act on a request for prior approval within 60 days of submission of the required information, unless the Board notifies the requesting member bank that a longer time period will be required to review and act on the request.

Examples of permissible community development and public welfare investments can be found in the Federal Reserve System's *Directory of Community Development Investments* at www.federalreserve.gov/dcca/directory/.

REMINDER

Notice must be made to the Federal Reserve within 30 days of making the investment.

INFORMATION ABOUT THE INVESTING BANK

Bank Name	RSSD – Bank’s ID#	
Street		
City	State	Zip Code

BANK CONTACT INFORMATION

Name and Title of Contact Person for the Investment		
Mailing Address		
City	State	Zip Code
Telephone Number	Fax Number	E-mail Address

INFORMATION ABOUT THE INVESTMENT

Amount of the Investment

OPTIONAL: Description of the Investment *(Please detail how the investment fulfills the definition of public welfare or community development. Use additional paper if necessary.)*

**Checklist for
Notice of Public Welfare Investments by State Member Banks
that Do Not Require Prior Approval**

Regulation H does not require that this checklist be submitted to the Federal Reserve System. A bank may choose to use this checklist, however, as an aid in determining if a proposed public welfare investment may be made without prior regulatory approval. If the bank or the proposed investment **does not meet** the requirements described in this form, then the bank must submit a request for prior approval of the investment. Such a request must include the information specified in section 208.22(d) of Regulation H, and must be submitted (by way of a letter or other submission on bank letterhead) to the appropriate Federal Reserve Bank, as listed on the final page of this form.

TO MAKE A PUBLIC WELFARE INVESTMENT WITHOUT PRIOR BOARD APPROVAL:

1. The investing bank must meet **all** of the following requirements:
 - ☐ The bank is well-capitalized or adequately capitalized under 12 CFR 208.43(b)(1) and (2);
 - ☐ The bank has received a composite CAMELS rating of “1” or “2” as of its most recent examination;
 - ☐ The bank has received an overall rating of “1” or “2” as of its most recent consumer compliance examination; and
 - ☐ The bank is not subject to any written agreement, cease-and-desist order, capital directive, prompt-corrective-action directive, or memorandum of understanding issued by the Board or by a Federal Reserve Bank.
2. The proposed investment must meet **all** of the following requirements:
 - ☐ The investment is permitted by state law;
 - ☐ The investment will not expose the bank to liability beyond the amount of the investment;
 - ☐ The investment will not cause the bank’s aggregate public welfare and community development investments to exceed 5 percent of the bank’s capital stock and surplus; and
 - ☐ The investment is in a corporation, limited partnership, or other entity.
3. The proposed investment must meet **one or more** of the following requirements:
 - ☐ The Board has determined that an investment in that entity or class of entities is a public welfare investment under paragraph 23 of Section 9 of the Federal Reserve Act (12 U.S.C. 338a) or community development investment under Regulation Y (12 CFR 225.127, *see also* 12 CFR 225.28(12));

OR

 - ☐ The Comptroller of the Currency has determined by order or regulation that an investment in that entity by a national bank is a public welfare investment under section 5136 of the Revised Statutes (12

U.S.C. 24 (Eleventh));

OR

- ☐ The entity in which the investment is to be made is a community development financial institution as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5));

OR

- ☐ The entity in which the investment is to be made engages, directly or indirectly, solely in or makes loans solely for the purposes of one or more of the following community development activities:
 - ☐ **Residential Property** - Investing in, developing, rehabilitating, managing, selling, or renting residential property where the majority of the units will be occupied by low- and moderate-income persons², or if the property is a “qualified low-income building” as defined in section 42(c)(2) of the Internal Revenue Code, 26 U.S.C. 42 (c)(2);
 - ☐ **Nonresidential Real Property** - Investing in, developing, rehabilitating, managing, selling or renting nonresidential real property or other assets located in a low- or moderate-income area³ and targeted toward low- and moderate-income persons;
 - ☐ **Small Business Development** - Investing in one or more small businesses⁴ located in a low- or moderate-income area to stimulate economic development;
 - ☐ **Job Training or Placement** - Investing in, developing or otherwise assisting job training or placement facilities or programs that will be targeted towards low- and moderate-income persons;
 - ☐ **Employment Opportunities** - Investing in an entity located in a low- or moderate-income area if the entity creates long-term employment opportunities, a majority of which (based on full-time equivalent positions) will be held by low- and moderate-income persons;
 - ☐ **Technical Assistance** - Providing technical assistance, credit counseling, research, and program development assistance to low- and moderate-income persons, small businesses, or nonprofit corporations to help achieve community development.

Reminder: For investments that do not meet one or more of these criteria, the investing bank must submit a request for prior approval to the Federal Reserve. Such a request must include the information specified in section 208.22(d) of Regulation H, and must be submitted (by way of a letter or other submission on bank letterhead) to the Federal Reserve Bank of which the investing bank is a member.

² Low- and moderate-income persons are defined in 42 U.S.C. 5302(a)(20)(A) as families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development with adjustments for smaller and larger families.

³ Low- or moderate-income area is defined as one or more census tracts in a Metropolitan Statistical Area (MSA) where the median family income adjusted for the family size in each census tract is less than 80 percent of the median family income adjusted for family size of the MSA. If the area is not in a MSA, the definition is one or more census tracts or block-numbered areas where the median family income adjusted for family sizes in each census tract or block numbered area is less than 80 percent of the median family income adjusted for the family size of the state.

⁴ Small business means a business that meets the size-eligibility standards of 13 CFR 121.108(a)

Please submit these forms to your Federal Reserve Bank District

District 1

Federal Reserve Bank of Boston
Attn: Applications and Analysis Unit
Supervision & Regulation Department
P.O. Box 2076
Boston, Massachusetts 02106

District 2

Federal Reserve Bank of New York
Attn: Legal and Compliance Risk Dept.
33 Liberty Street
New York, New York 10045

District 3

Federal Reserve Bank of Philadelphia
Attn: Supervision, Regulation & Credit -
Regulatory Applications
Ten Independence Mall
Philadelphia, Pennsylvania 19106

District 4

Federal Reserve Bank of Cleveland
P.O. Box 6387
Cleveland, Ohio 44101

District 5

Federal Reserve Bank of Richmond
Banking Supervision and Regulation
Attn: Applications Processing, 13th Floor
P.O. Box 27622
Richmond, Virginia 23261

District 6

Federal Reserve Bank of Atlanta
2301 Defoor Hills Road
Atlanta, Georgia 30318

District 7

Federal Reserve Bank of Chicago
Supervision and Regulation
Attn: Applications Dept.
230 South La Salle Street
Chicago, Illinois 60604-1413

District 8

Federal Reserve Bank of St. Louis
Attn: Community Affairs Office
P.O. Box 442
St. Louis, Missouri 63166

District 9

Federal Reserve Bank of Minneapolis
Banking Supervision Department
Attn: Applications Manager
P.O. Box 291
90 Hennepin Avenue
Minneapolis, Minnesota 55480

District 10

Federal Reserve Bank of Kansas City
Attn: Consumer Affairs
925 Grand Boulevard
Kansas City, Missouri 64198

District 11

Federal Reserve Bank of Dallas
P.O. Box 655906
Dallas, Texas 75265

District 12

Federal Reserve Bank of San Francisco
101 Market Street
San Francisco, California 94105